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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977
No. 77-91

JAMES M. GAYLORD,

Petitioner,

v.

TACOMA SCHOOL DISTRICT NO. 10, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF WASHINGTON

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INTRODUCTION

Respondent school district respectfully
registers its opposition to the issuance of a writ
of certiorari to review the judgment of the Wash-
ington State Supreme Court which sustained

petitioner's discharge from employment.

For present purposes, no counterstatement will be offered to petitioner's references to opinions below, statement of jurisdictional grounds, or statement of the questions presented. An objective statement of the case is found in the Washington State Supreme Court opinion printed in the appendix to petitioner's petition at pp. 19a-22a.* (88 Wn.2d 286 at 287-290.)

Petitioner's compilation of statutes must be supplemented to include the statute which was actually utilized as a basis for petitioner's discharge. This additional statute (as of the time of petitioner's discharge and trial), quoted only in pertinent part, is Revised Code of Washington 28A.58.100.

Directors--Hiring and discharging employees--Leaves for employees--Seniority and leave benefits, retention upon transfers between schools. Every board of directors, unless otherwise specially provided by law, shall:

(1) Employ for not more than one year, and for sufficient cause discharge all certificated and noncertificated employees, . . . ;

*This brief contains no appendix. Instead, utilization is made of the appendix to petitioner's petition with references to be made as "PA-___".

(2)

ARGUMENT

The statutory language of "sufficient cause," judicially defined as "conduct which would affect a teacher's efficiency," was deemed by both the majority and the dissent below to be a constitutional basis for discharging a public school teacher. (PA-22a and 32 a. 88 Wn.2d at 290 and 300.)

First amendment and due process rights are protected, because it is conduct, and not simply a person's thoughts, which are in issue. Equal protection, due process, and privacy are safeguarded by the requirement for showing that the conduct in question adversely affects a teacher's efficiency. This "rational nexus" places the school district policy statement warning against "immorality" in its proper context. Whatever may be said of immorality as an abstract term, by coupling it with the necessity for showing actual or prospective adverse performance as a teacher, the challenge of vagueness is squarely met and overcome. Petitioner's first two "Questions Presented" do not provide a sound basis for granting review.

It is petitioner's third "Question Presented" which highlights the true boundaries of the disagreement between the majority and dissent below. Two judges out of eight have evidenced their sincere belief that there is no substantial evidence in the record to satisfy the requirements of what is otherwise conceded to be a constitutionally

valid law. Six judges are satisfied that substantial evidence is present. Presence of substantial evidence is certainly a basic aspect of due process, but here, where a review of the trial court's action has been completed by eight additional judges, it is submitted that the Constitution has been satisfied; that the "process" which is "due" has been rendered. Southern Power Company v. North Carolina Public Service Co., (1924), 263 U. S. 508. General Talking Pictures Corp. v. Western Electric Co. (1938), 304 U. S. 175, 178.

This conclusion is not altered by petitioner's characterization of one aspect of the evidence validation process as being an ex post facto application of a rebuttable presumption. The rule utilized by the majority below is firmly grounded on analogous, antecedent authority. (PA-25a-27a, 88 Wn.2d at 293-295)

CONCLUSION

The law applicable to the discharge of petitioner is secure from challenge on a constitutional basis. All that remains of petitioner's request is an invitation for this court to once again review the record and redetermine whether or not substantial evidence is present. It is respectfully submitted that this invitation should be declined.

Respectfully submitted,

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